

IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,
v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,

AND

DEPAUL HOSPITAL,
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of the State of Wyoming**

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Fourteenth Amendment of the United States Constitution prohibit a state law which requires possession of a medical license by one who seeks to practice as an unsupervised anesthesiologist for non-dental procedures?*

* The parties to this proceeding are Russell F. Paravecchio, D.M.D., Petitioner, and Memorial Hospital of Laramie County and DePaul Hospital, Respondents.

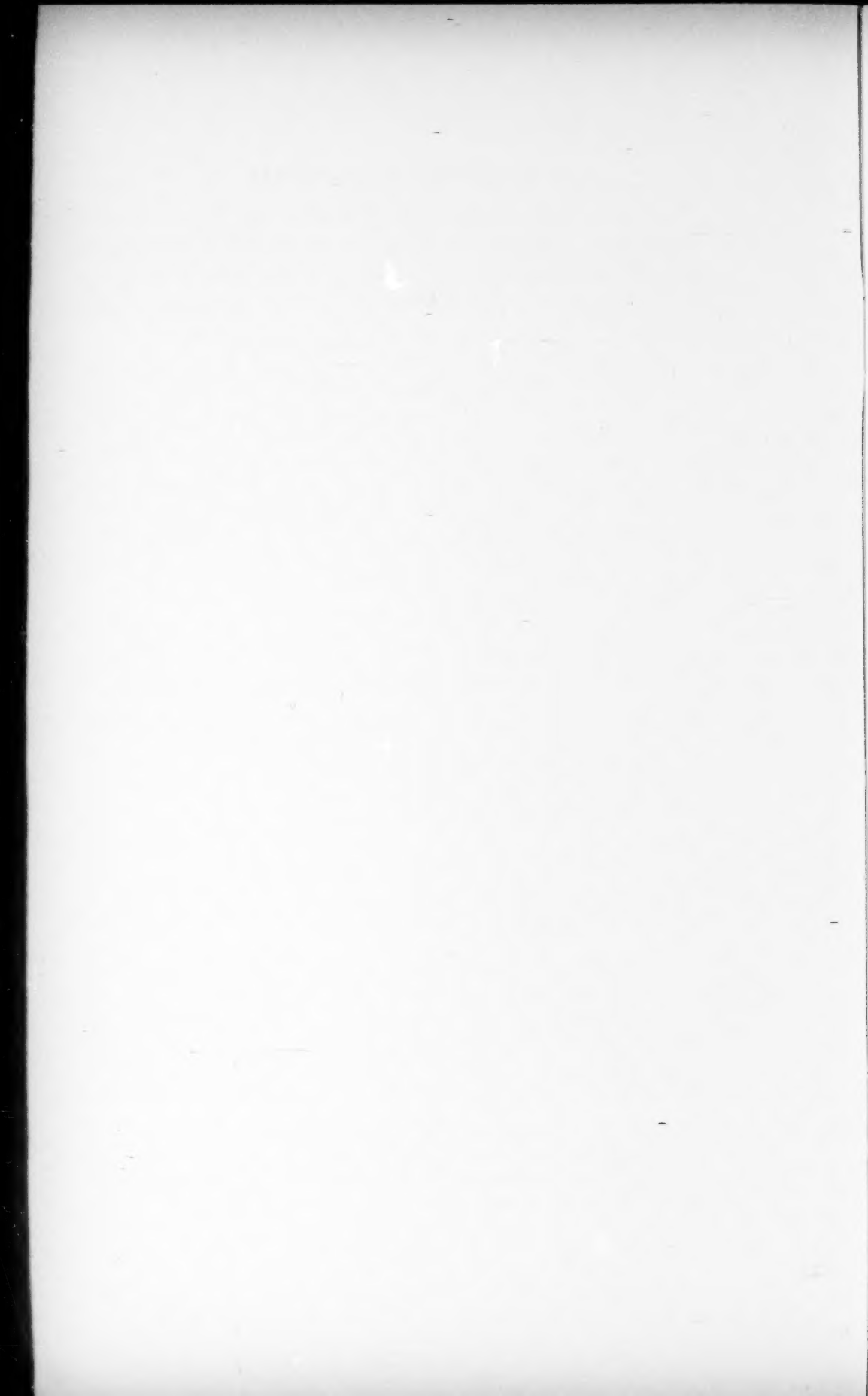


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IN THE
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OCTOBER TERM, 1987

No. 87-1119

RUSSELL F. PARAVECCHIO, D.M.D.,
v. *Petitioner,*
MEMORIAL HOSPITAL OF LARAMIE COUNTY,
AND
DEPAUL HOSPITAL,
Respondents.

On Petition for a Writ of Certiorari to the
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OPINIONS BELOW

Petitioner seeks review of *Paravecchio v. Memorial Hospital, et al.*, 742 P.2d 1276 (Wyo. 1987) (Pet. App. 1a-16a). The decision of the trial court appears in the Appendix to this brief at 1a through 3a.

JURISDICTION

Jurisdiction is proper under 28 U.S.C. § 1257(3). The Wyoming Supreme Court rendered its opinion on September 17, 1987 and denied a Petition for Rehearing on October 7, 1987 (Pet. App. at 17a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner relies on Section One of the Fourteenth Amendment to the Constitution of the United States (Pet. at 2). In addition, portions of the Wyoming Dental Practice Act¹ and the Wyoming Medical Practice Act² deemed relevant by the Wyoming Supreme Court to its decision are quoted at length in its opinion. (Pet. App. 5a-9a.)

STATEMENT OF THE CASE

Respondents adopt Petitioner's Statement of the Case as it reflects procedural matters except to note that it is misleading to represent to this Court that the Wyoming State Board of Dental Examiners issued a ruling that a dentist anesthesiologist can also practice the full scope of clinical anesthesiology in Wyoming. The Board of Dental Examiners rendered no such ruling, as pointed out to the Wyoming Supreme Court (Appellee's Brief at 17-18).

Contrary to Petitioner's assertions, the Wyoming Supreme Court satisfactorily concluded that the Equal Protection Clause of the Fourteenth Amendment was not violated by the state licensing laws in question. The court's opinion unequivocally established the important state interest in protecting the public health and included an appropriate equal protection analysis of the economic legislation under review.

¹ Wyo. Stat. §§ 33-15-101 through 33-15-128 (1986 Cum. Supp.).

² Wyo. Stat. §§ 33-26-101 through 33-26-152 (1986 Cum. Supp.).

ARGUMENT

I. This Case Reflects Proper Statutory Interpretation With Respect To A Narrow Issue.

This case is nothing more than a statutory interpretation matter in which Dr. Paravecchio attempted to convince the Wyoming Supreme Court to extend the scope of his dental license to include the unsupervised administration of clinical anesthesia for non-dental purposes. The constitutional issue raised here was not the primary focus of Dr. Paravecchio's efforts in the court below. Instead, he focused primarily upon his interpretation of the Wyoming Dental Practice Act by attempting to redefine the scope of dentistry. The Wyoming Supreme Court's opinion unequivocally found that the Wyoming Legislature did not intend for dentists to be licensed to administer clinical anesthesia for non-dental purposes. It was the analysis of this legislative intent which laid the groundwork for the court's constitutional analysis.

This matter is not of sufficient import to parties other than those directly involved in this case to warrant review upon certiorari by this Court. To begin with, it involves an interpretation only of Wyoming's Medical and Dental Practice Acts. Future cases in other states will necessarily have to be decided upon the particular statutes involved in those states and other courts will not necessarily be bound by any pronouncement which might result from consideration of this case involving Wyoming statutes.

Petitioner fails to demonstrate why Dr. Paravecchio's attempt to practice medicine without appropriate licensure merits the scrutiny of this Court. One of the difficulties with Dr. Paravecchio's classification arguments below, as will be noted again later, was that Dr. Paravecchio did not purport to be representative of the vast majority of dentists. Instead, he attempted to carve a niche for himself and the relatively few dentists with

similar training by attempting to create a new class. Since there is no proof that even one other similarly situated practitioner lives in Wyoming where the statutes in question are applicable, this Court's valuable resources should not be wasted upon this case.

Petitioner attempts to enhance the importance of this case by asserting that this Court has considered the rights of patients as well as medical care providers in cases involving issues of health care. However, it is clear that the cases cited by Petitioner involve primarily the availability of a particular type of care (e.g., clinical abortion) from any source, while this case involves only the availability of anesthesia services from one unusually trained dentist. Petitioner cannot argue that anesthesia services are not obtainable by Wyoming patients and his unproven assertion by footnote about the use of nurse anesthetists in Wyoming should not sway this Court since Dr. Paravecchio and both Respondents in this case are located in Cheyenne, Wyoming, where a number of medical doctors practice the specialty of anesthesiology. In addition, any such use of nurse anesthetists is under the direct supervision of a licensed physician.

It is also interesting to note that this case does not involve a total prohibition against Dr. Paravecchio's practice of anesthesiology. Indeed, he admits to being able to practice in the Veterans Administration Hospital in Cheyenne, which hospital, it should be noted, is expressly exempt from Wyoming statutory regulation. Instead, Dr. Paravecchio's attempt to gain staff privileges in state-regulated institutions is a pursuit of economic interest only. Petitioner's veiled references to lack of competition in the health care field do not adequately raise any justifiable issue and are not sufficient to warrant this Court's attention to Wyoming's statute.

Finally, it is interesting to note that there is absolutely no conflict in judicial authority with respect to interpre-

tation of similar statutes in other states. Courts in Florida and Washington have interpreted their Dental Practice Acts in the same manner as the Wyoming Supreme Court has. See *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 2 Dist. 1986) and *Everett v. State*, 661 P.2d 588 (Wash. 1983). The Washington Legislature created a special licensing category for dentist anesthesiologists *after* the *Everett* opinion. Respondents believe an attempt to achieve a legislative solution is the only proper course for Dr. Paravecchio and others like him, if there are, indeed, others like him in Wyoming. As noted by Justice White recently, the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes. *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). If Dr. Paravecchio believes the Wyoming statutes which were upheld by the Wyoming Supreme Court are unfair or unjust, he has the right to utilize those democratic processes to attempt to effect policy change. This Court should not allow itself to become a forum for one man's effort to enhance his economic condition by non-legislative means.

II. The Wyoming Supreme Court's Constitutional Analysis Was Permissible In Result And Methodology.

The bulk of the Wyoming Supreme Court's opinion below was devoted to a determination of the legislative intent behind the Wyoming Dental Practice Act. In analyzing that legislative intent, the Wyoming Court reviewed not only the statute but its prior holdings concerning the permissibility of legislative restrictions on the practice of medicine, including clinical anesthesia. Those cases clearly established an important state interest in the quality of medical care to Wyoming citizens, an interest Petitioner cannot and does not deny.

Dr. Paravecchio has consistently attacked the Wyoming classification system which separates the practice

of medicine from the practice of dentistry. Dr. Paravecchio has done all he can to disassociate himself from the general class of dentists, since admittedly, the vast majority of that class is not trained or capable of administering anesthesia for non-dental procedures. However, Dr. Paravecchio clearly cannot place himself in the category of medical doctors due to his lack of a medical degree and medical license. In essence, Petitioner has attempted to create a separate class for himself as a residency-certified dentist anesthesiologist. Two unlike classes cannot be made indistinguishable by attaching a common label to them. *Richardson v. Belcher*, 404 U.S. 78 (1971). It is of no constitutional significance that the degree of rationality of classification is not as great with respect to certain ill-defined subparts of the classification. *New York City Transit Authority v. Beazer*, 440 U.S. 568 (1979).

Of course, as noted in the *Cleburne* case, "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980)." (Other citations omitted.) 473 U.S. 440. The *Cleburne* opinion also noted that, "When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, *Fritz, supra*, at 174 (other citations omitted), and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *Cleburne, Id.* These are precisely the standards applied by the Wyoming Supreme Court, as prior Wyoming cases had announced those same standards as well. See, e.g., *Baskin v. State ex rel. Worker's Compensation Division*, 722 P.2d 151 (Wyo. 1986).

The Wyoming court properly applied the traditional rational basis test to this economic legislation, consistent

with the precedents of this Court. *See, e.g., Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). The court properly noted the presumption of statutory constitutionality and the concomitant permissible assumptions concerning facts which could reasonably justify the statutory classification. (Pet. App. at 14a-15a.) Petitioner cites the *Cleburne* case as requiring that every rational basis analysis include a detailed factual inquiry. Respondents do not agree that the *Cleburne* decision mandates more fact finding that the Wyoming Supreme Court did in this case. The court satisfied itself that the classification of doctors versus dentists was more than simply rationally related to the public's interest in quality health care and was not arbitrary or irrational. Legislative solutions must be respected if the distinctions drawn have some basis in practical experience. *McGinnis v. Royster*, 410 U.S. 263 (1973). A traditional level of factual inquiry was all that was necessary to support the Legislature's classification in this case. Even so, the Court concluded its opinion by noting that it had given Dr. Paravecchio the benefit of all the facts he alleged in his complaint. (Pet. App. at 16a.) The Wyoming Supreme Court's opinion clearly demonstrates the basis for concluding that the Legislature's distinction between medical doctors and dentists was intentional and not unwarranted. When all was said and done, the Wyoming court simply refused to indulge in the reclassification Dr. Paravecchio sought and found that because unsupervised clinical anesthesia constitutes the practice of medicine, only those licensed to practice medicine should be allowed to do it. As noted by this Court,

The "task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favorite treatment be placed on different sides of the line," *Mathews v. Diaz*, 426 U.S. 67, 83-84 (1976), and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial,

consideration. *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980).

Prior efforts to encourage judicial restructuring of health care classification statutes and regulations have failed. As noted by Petitioner, this Court has recently refused to hear a case involving efforts by osteopaths to gain full medical staff privileges. *Stern v. Tarrant County Hospital Dist.*, cert denied, — U.S. —, 106 S.Ct. 1957 (1986). Petitioner's challenge here is certainly not any better candidate for discretionary review.

From the standpoint of public policy and fairness, the Wyoming court's decision is unassailable. The court left any future reclassification decision to the Legislature and did not attempt a piecemeal dissection of health care classifications solely for the benefit of one individual. For this Court to grant Dr. Paravecchio's petition would send a needless and dangerous message that an individual might hope to gain membership by judicial means in another profession without meeting all of the legitimate statutory criteria for membership. The Legislature is certainly better able than this court to deal with "special" cases such as Dr. Paravecchio's. Neither its method for dealing with these cases nor its result should be mandated by a decision of this Court.

CONCLUSION

Dr. Paravecchio's petition fails to establish that this case warrants review by this Court for either policy or procedural reasons. The Wyoming Supreme Court arrived at its decision in a permissible fashion consistent with time-honored principles of equal protection analysis of economic regulation statutes. This Court ought not accept Dr. Paravecchio's invitation to impose improper and unwarranted scrutiny upon the Wyoming court's efforts. The Petition for a Writ of Certiorari to the Wyoming Supreme Court must be summarily denied.

Respectfully submitted,

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APPENDIX

THE STATE OF WYOMING
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[SEAL]

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[Filed Oct. 28, 1986]

RE: Parravecchio v. Memorial Hospital, et al.
Civil Docket No. 110-248

Dear Counsel:

I have had under advisement the parties' motions to dismiss and for joinder, under Rule 19(b), of the State Board. Since hearing arguments on the motions, I have reviewed the files and the memoranda and have reviewed a memorandum prepared by Michele McKellar. I have concluded that the Motion to Join the State Board should be denied and that the hospitals' Motion to Dismiss should be granted. Mr. Dray and Mr. Carmichael will please submit the appropriate orders.

Plaintiff contends essentially that the hospitals misinterpret and wrongly apply the Medical Practices Act and other statutory provisions to prevent Plaintiff from practicing general unsupervised anesthesiology and that if the hospitals are in fact correctly interpreting and applying the statutes, these statutes are unconstitutional as a denial of equal protection. To me a plain reading of the statutes is that a dentist is not authorized under Wyoming Law to practice clinical anesthesiology without a physician's license. Of course, statutes carry a strong presumption of constitutionality.

The Plaintiff carries the burden to demonstrate that a classification is without reasonable basis and essentially arbitrary. It appears that such burden has not been met in this case, but rather that the legislature has acted pursuant to a legitimate state interest in protecting the public health and safety and that the classification scheme of the Wyoming Dental Practices Act and of the Medical Practices Act are not arbitrary. Therefore, this Court must decline the invitation to declare them unconstitutional as they relate to the facts and issues of this case.

Very truly yours,

/s/ Edward L. Grant
EDWARD L. GRANT
District Judge

ELG/adp

